BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 95-720-C - ORDER NO. 96-136

APRIL 2, 1996

IN RE: Application of BellSouth Telecommunications D/B/A Southern Bell for Request for Alternative Regulation.	)	ORDER DENYING REHEARING AND/OR RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on six Petitions for Rehearing and/or Reconsideration of our Order Nos. 96-19 and/or 96-78, both dated January 30, 1996. The Petitions were filed by BellSouth Telecommunications, Inc. (BellSouth), South Carolina Cable Television Association (SCCTA), AT&T Communications of the Southern States, Inc. (AT&T), MCI Telecommunications, Inc. (MCI), the South Carolina Public Communications Association (SCPCA) and the Consumer Advocate for the State of South Carolina (the Consumer Advocate). Because of the reasoning as stated below, all Petitions are hereby denied.

BellSouth Telecommunications Petition for Rehearing and Reconsideration consisted of two issues. First, BellSouth took issue with the Commission's use of a five year stabilization period for the Basic Service category of the Consumer Price Protection Plan (the Plan), since it had filed for a three year stabilization period in its original Plan. BellSouth stated that in its belief,

in light of the rapid changes in the industry occurring as they do, a five year period is inappropriate. In our Order No. 96-19 at 28, we held that 5 years is more consistent with the public interest than three years, and, second, the five year stabilization plan increased the clearly identifiable benefits to consumers not otherwise available under existing regulatory procedures. See §58-9-575(B)(1) and (3). Therefore, we affirmed our belief that a five year stabilization period for the Basic Service category actually increased the Plan's compliance with the provisions of South Carolina Code Ann. §58-9-575. We continue to hold that the 5 year period is appropriate. Further, we believe that while this period is certainly discretionary with the Commission, a five year cap on Basic Services is, in our judgment, a reasonable trade-off for BellSouth in return for more flexibility in the pricing of its competitive services. We therefore reject the first contention of BellSouth.

BellSouth's second contention was that no productivity factor should have been imposed to offset BellSouth's inflation factor to produce a rate increase after the cap or stabilization period expires. BellSouth's testimony in this case stated that since it could adjust prices for the previous year's inflation, BellSouth's prices would lag behind inflation, and that therefore a productivity offset is inherent in the Plan as proposed. See Tr. Vol. 12, Varner, at 4 and 16. It should be noted that the Commission weighed the evidence, both from BellSouth's witness Varner and from the Staff, and concluded that Staff's testimony was

more convincing on this issue. The concept of the productivity factor was most appropriate. Further, the 2.1% as adopted by this Commission appeared in the transcript of record in Vol. 10 at 175, line 17. BellSouth witness Varner, in response to cross-examination by MCI attorneys, stated that the FCC had found that the productivity factor that BellSouth was experiencing over all of its services was 2.1%. Therefore we believe that the productivity factor found in our original Order No. 96-19 is appropriate, and that 2.1% is appropriate as a productivity factor. as is seen in the cross-examination of BellSouth witness Varner.

The South Carolina Cable Television Association (SCCTA) propounded a number of reasons for this Commission, in its opinion, to rehear or reconsider the case. First, SCCTA stated that the Order erroneously concluded that BellSouth's services are "subject to competition" within the meaning of Section 58-9-575(A). We would note that similar sentiments were expressed by AT&T, MCI and SCPCA. We would reiterate that this Commission takes a "plain meaning" view of the term "subject to competition," and holds that before implementation of regulatory alternatives, BellSouth must simply show that it is subject to competition with respect to its services. In Order No. 96-19, we recited credible evidence and examples of competition for BellSouth services over some eight pages.

Frankly, the record is replete with evidence of competition. In addition to that already cited by us, Dr. Charles L. Jackson stated in his testimony that cable firms and electric power

utilities, through new technologies, have the option to compete in the local telephone business. Further, we find Dr. Jackson's testimony to be credible when he states that cable companies, competitive access providers, and radio-based service providers will provide the most significant competition during the next ten years. See Tr. Vol. 7, Jackson at 94. We do not believe that any intervenor has successfully refuted the fact that BellSouth is "subject to competition" for a number of its services now and in the future.

Nor do we agree that Section 58-9-575(A) is governed by the specific criteria set out in Section 58-9-575(B)(6). We think that the availability, market share, and price of comparable service alternatives criteria set out in that section are to be used to determine whether a particular or specific service is competitive, not whether the local exchange telephone utility is subject to competition with respect to its services as a whole. The (B)(6) criteria are inapplicable to a determination of the "subject to competition" standard in Section 58-9-575(A).

We reject the contention of SCCTA that the statute only contemplates alternative regulations for those services for which actual competitive alternatives are available. The second section of (A), in full, may be stated as follows: "If the commission determines that a local exchange telephone utility is subject to competition with respect to its services, the commission may implement regulatory alternatives including, but not limited to, equitable sharing of earnings between a local exchange telephone

utility and its customers, consistent with the provisions of Section 58-9-330." Clearly, it would be difficult to implement the form of alternative regulation given as an example, i.e. sharing of earnings, solely with respect to those services for which actual competitive alternatives are available. The sharing of earnings is, in our opinion, a whole company concept. We also believe that, likewise, alternative regulation is a whole company concept, and that the Plan covers the whole Company in its scope, not just competitive services.

We also disagree with AT&T that the similarities in language in Sections 58-9-575 and 58-9-585 mandate an identical interpretation. The three criteria in Section 58-9-585 are in the first main section of that statute, whereas, in Section 58-9-575, they are in only a single subsection of the law. We believe this differing treatment of the criteria mandates the differing application as we have already described above. We reject AT&T's assertion in this regard. Again we hold and reaffirm our holding in Order No. 96-19 that the BellSouth Plan has met the "subject to competition" criterion of Section 58-9-575(A).

We further reject the contention of the SCCTA that certain services should be reclassified as Basic due to the asserted lack of specific evidence of the factors listed in 58-9-575(B)(6) for such services. Many parties which submitted a Petition for Reconsideration have asserted that the Plan should articulate each and every service of BellSouth and identify whether each service is competitive according to the factors contained in 58-9-575(B)(6).

The thrust and focus of the (B)(6) requirement is safeguards against cross-subsidies, not a definition of "subject to competition" or a prefabricated "basket" outline. The criteria set forth in (B)(6) are provided for use in classifying services as either competitive or noncompetitive when determining whether improper cross-subsidization is occurring.

We have ruled that noncompetitive services shall not subsidize competitive rates as the statute requires. This Commission will enforce this requirement on an ongoing basis through the monitoring process. In contrast to SCCTA's argument that the statutory provisions cannot be applied to the approved Plan, we feel the rational way to enforce section (B) of the statute is to continually monitor the approved Plan as technology and the marketplace change.

Our current division of services into the three baskets is proper at this time. The Commission may, at any time, examine any or all services of BellSouth and the flow of money associated with those services. If we find in the future that improper cross-subsidization is occurring, we will order that it be ceased. Staff is to report to this Commission annually on the consumer impacts of the Plan. Long run incremental cost studies for any service may be ordered to evaluate services at anytime. Indeed, we will follow the statute in consideration of BellSouth's services in light of their availability, market share, and comparable service alternative prices. A full determination of the status of <u>all</u> services (i.e., whether or not a service is competitive according

to these criteria) is not required by this Code section.

We hold that, from the evidence presented, certain services are competitive and some are noncompetitive. This Commission may review market share data and other information regarding all BellSouth services and recharacterize a service from "noncompetitive" to "competitive" or vice versa at any time. We also may move services amongst the baskets if we feel such moves are necessary or in the best interests of the public and the Plan and its functions.

If BellSouth prices basic services below cost in order to meet social policy goals, we will not rule such pricing improper. This Commission has the authority to make and institute social policy goals such as universal service and affordably priced basic service. These goals will not be sacrificed to benefit any one party, BellSouth or the Plan itself.

In summation regarding 58-9-575(B)(6), we find that substantial evidence supporting the Plan and the Plan itself as modified show and effectuate effective safeguards which assure that rates from noncompetitive services do not subsidize prices charged for competitive services.

Various parties have asserted that the Plan fails to meet the requirement of 58-9-575(B)(7) that prices for noncompetitive services be "just and reasonable." The SCCTA asserts that the Commission committed legal error because it ruled its existing rates are "just and reasonable." This Commission reiterates that current rates were set upon Commission approval. The Commission is

charged by South Carolina Code Section 58-9-210 to set just and reasonable rates, not simply "lawful" rates. We have striven to fulfill our statutory duties and therefore deem current rates as being "just and reasonable" since they passed our judgment. We have used the most recent data available under our long-accepted form of regulation of earnings to determine these rates. The rates are just and reasonable at this time. The allegations by the parties that the Commission's findings regarding (B)(7) are erroneous in Order No. 96-19 are irrelevant also since past Commission orders have addressed these concerns and found the pricing on BellSouth's noncompetitive services to be just and reasonable. No court has overturned these findings, and, therefore, no error has been committed in our reasoning.

Various parties also argue that no assurance of maintenance of just and reasonable rates exists. SCCTA asserts that this Plan must include an earnings sharing mechanism to ensure continued just and reasonable rates. The "mechanism" does not have to be in the form of an earnings sharing arrangement as suggested as a possibility in Section (A) of the statute. As made clear in our original order, a basic facet of this alternative regulation is that prices and rates are unhooked from earnings. Therefore, we feel that SCCTA's argument regarding earnings is without merit.

The Plan indeed includes mechanisms to assure that rates for noncompetitive services remain "just and reasonable." The caps serve to prohibit any increases on the existing just and reasonable rates. As we discuss herein, the rates may decrease during the

"cap" period, since the caps are a ceiling only and not a "freeze" on the rates.

After the time period for caps has expired, rates may only be increased according to the rules of the pricing plan, not at BellSouth's whim. The 2.1% productivity offset on the inflation-based pricing methodology also will curb potential future increases. Even when BellSouth requests that prices be increased, the Commission will review the proposed increase to determine if the increase is in the public interest, produces just and reasonable rates, and is not discriminatory. The Commission is therefore a mechanism, also, to assure just and reasonable rates. We have the ultimate power of review.

Parties should understand that we will review annually as assisted by Staff the Plan and its operation in regards to all of BellSouth's services. The SCCTA's footnoted suggestion of periodic rate cases exhibits a basic failure to understand that "alternative regulation" changes the manner in which this Commission regulates BellSouth. We reject these arguments.

AT&T also petitions for Rehearing or Reconsideration of Order No. 96-19 and Order No. 96-78. First, AT&T repeats the contention that BellSouth has not met the "subject to competition" criteria of Section 58-9-575(A). This is addressed fully above. Second, AT&T notes that the Commission, in approving BellSouth's Plan, has virtually insured that customers of the utility will be deprived of the opportunity to receive overearnings, refunds, and price reductions in the future, and that the Plan is inconsistent with

the public interest, in violation of Section 58-9-575(B)(1). This is certainly not the case. We addressed in detail in Order No. 96-19 our holding that the Plan as submitted by BellSouth, and as modified by us, met the criteria of Section 58-9-575(B)(1). Further, we would again note that the prices for Basic Service have not been "frozen", but capped, which certainly allows consumers to receive price reductions in the future. Our intent in Order No. 96-19 was simply to cap the prices, not to prohibit reductions below the cap in the present levels of the prices. This contention is without merit.

Further, AT&T alleges that the Plan has violated the provisions of S.C. Code Ann. Section 58-9-575(B)(3), and that there are no "clearly" identifiable benefits to consumers in the Plan. Again, we reject that contention, as we believe we have elucidated our holding in this matter in Order No. 96-19, and we will rely on that holding herein.

AT&T next requests the Commission reconsider its decision regarding 58-9-575(B)(5) because, in its opinion, interexchange carriers as customers of BellSouth are not protected from "unilateral" increases in access charges. This argument is based upon the reasoning that there is no requirement that access charges ever be decreased.

The statute requires that the Plan provide "adequate safeguards to consumers of telecommunications services, including other telecommunications companies, when such services are not readily available from alternative suppliers . . . . "

The Commission denies this request for reconsideration. The Plan provides "adequate safeguards" for interexchange carriers and the access charges by (1) the three year price cap and (2) the Commission's ultimate approval power over all potential price increases, which must be filed with the Commission. The cap will prevent any increases over the next three year period and certainly does not prohibit any potential decreases. During the three year cap period, we feel that competition in all areas of BellSouth services will grow. The increasing competition and growing presence of alternative providers of access will maintain downward pressure on interconnection service rates.

Even if BellSouth requests an increase in access charges after the three year cap has expired, the request is subject to the pricing rules of the Plan. If the Commission feels that an access price increase would not ultimately be in the public interest, it has the power to deny the proposed price increase. There will be no access charge increases in the future unless approved by this Commission. As stated in the original order, BellSouth may not recover revenue losses due to competition or increased expenses unless approved by the Commission. This procedure for potential price increases does not reduce the "protection" afforded to interexchange carriers currently as suggested by AT&T in its Petition. Interexchange carriers are not guaranteed access reductions under current regulatory procedure.

AT&T next objects to the Order, stating that the safeguards against subsidies from noncompetitive to competitive services are

absent from the Plan. We have fully discussed this issue herein above and reiterate that the statute requires safeguards against cross-subsidies. We feel that we have provided the statutorily required assurance that access charges will not be used for improper cross-subsidization.

AT&T postulates that the Plan is in violation of the Federal Telecommunications Act of 1996. We disagree with this reasoning because, as discussed hereinafter, the Telecommunications Act need only be applied prospectively and should not be applied retroactively to this existing Order. We will work to harmonize the South Carolina legislation by which we are bound with the Federal Act.

Further, AT&T has requested that the Commission grant a stay in this matter, should it not Reconsider or Rehear Order No. 96-19 and 96-78. AT&T has stated no grounds for granting it, therefore the Commission respectfully declines to grant the stay.

MCI Telecommunications, Inc. has also Petitioned for Rehearing or Reconsideration of Order Nos. 96-19 and 96-78, and has also requested a Stay in the matter. First, MCI states that Commission erroneously granted an Alternative Regulation Plan that was all encompassing, including noncompetitive services. Again, we think that Alternative Regulation goes to the services of the Company as a whole, and not to specifically competitive and noncompetitive services. Second, MCI states that the "subject to competition" criterion was not met. See discussion above.

MCI next states that the Order fails to apply the criteria of

58-9-575(B)(6). Again, we disagree. This matter is discussed fully above. We emphasize that the "subject to competition" requirement of 58-9-575(A) and the criteria listed in 58-9-575(B)(6) are entirely different sections, and we do not read them together to determine whether BellSouth's services are subject to competition. We have also discussed above MCI's allegation that sufficient safeguards against improper cross-subsidization do not exist. We will protect against noncompetitive services subsidizing competitive services on an ongoing basis through the means cited above.

MCI further states that the Commission Orders violate Section 252(d)(1) of the Telecommunications Act of 1996 and that the access charges set by this Commission for BellSouth allegedly do not meet the criteria set forth for cost-based access charges listed in that Act. The Commission would note that the Telecommunications Act of 1996 was signed into law on February 8, 1996. Order Nos. 96-19 and 96-78 were issued January 30, 1996. Therefore we again hold that the Telecommunications Act of 1996 need only be applied prospectively, and should not be applied retroactively to an already existing set of Orders such as Nos. 96-19 and 96-78. Prospective application is a black letter tenet of law. This section simply does not apply to the Orders already issued by this Commission.

MCI also requested a stay of the Commission's Orders. Again, however, as with AT&T, MCI states no specific grounds. Since a stay is discretionary with the administrative agency, we therefore

decline to grant such.

MCI also opines that the Commission's Orders are violative of Section 1-23-380(A)(6), in that there is allegedly no substantial evidence of record to support the findings and conclusions made by the Commission relating to any of the statutory criteria set out in Section 58-9-575. Nothing could be further from the case. Order No. 96-19 clearly sets out evidence provided in the record to support its findings. This contention by MCI is therefore rejected.

MCI further states that the Commission has failed to set forth findings of facts and conclusions of law in violation of Section §1-23-350. There is clear precedent from the Seabrook Island case that findings of fact and conclusions of law need not be included in any specific form as long as they are present in an Order at issue. See Seabrook Island Property Owners Association v. South Carolina Public Service Commission, ___ S.C. ___, 401 S.E.2d 672 (1991). We believe our Order satisfies the criteria set up in this case. This contention is therefore rejected.

The last point made by MCI is that the Order allegedly summarily dismissed the objections of all Intervenors arguing against the Plan. MCI alleges that since the Order contained no major discussion on these points, that the Commission somehow failed to evaluate the recommendations of Intervenor witnesses in this matter. Such is not the case. The Commission thoroughly evaluated the entire record of this case, including all Intervenor testimony, and concluded, as we said in Order No. 96-19, that the

evidence presented by BellSouth "so strongly favors the establishment of a plan," that all other evidence in the case must fail. The Commission sits "akin to a jury of experts" in a case (See Hamm v. Public Service Commission, ____ S.C. ____, 422 S.E.2d 110 (1992)), and as such, may adopt after evaluation, any portion of the evidence that it sees fit. In this case, we believe that the testimony of BellSouth was pre-eminent, and that the adoption of the Plan as modified by us was appropriate. However, again, it must be pointed out that all Intervenor evidence was thoroughly evaluated by the Commission prior to making this decision. Therefore, the final contention of MCI is rejected.

The South Carolina Public Communications Association (SCPCA) also filed a Petition for Rehearing or Reconsideration in this matter. SCPCA's "subject to competition" argument has been addressed above.

SCPCA further alleges that Order No. 96-19 inaccurately characterizes BellSouth's proposed pricing rules for the Interconnection Services category. We would point out that in Order No. 96-133, we addressed this matter and clarified it. Therefore, the second contention of SCPCA is without merit.

Third, SCPCA alleges that the evidence cited in support of the existence of competition is inadequate. Again, the Commission must in its discretion judge the evidence placed before it, and holds that the record is replete with evidence of competition with BellSouth in South Carolina. This contention must be rejected.

SCPCA also states that the Commission erred in holding that

prices for all BellSouth's services are currently just and reasonable. As we have discussed previously, herein, all prices for BellSouth have been approved by this Commission. They have not been overturned by any judicial decree. Therefore, they are by definition just and reasonable.

SCPCA criticizes the Commission's holding that BellSouth met the criteria of Section 58-9-575(B)(3). Clearly, there are three (3) mechanisms which ensure that cross-subsidization will not take place as listed on page 20 of our Order: (1) a disconnection of prices from earnings; (2) the requirement to price above long-run incremental costs (except when required to meet public interest goals such a universal service or to meet the equally low price of a competitor); and (3) the requirement that all price changes be subject to tariff filing requirements. Tr., Vol. 11, Varner at 10-11. We believe that these mechanisms will guard against cross-subsidization under the Plan. Clearly, earnings will not be a factor in the setting of prices. Second, pricing above long-run incremental costs assures that the Company receives its costs for every service. Therefore, there is no need for cross-subsidization. Third, price changes being subject to tariff filing requirements ensures that this Commission will examine all price changes as they are being made for potential cross-subsidization.

SCPCA alleges that the Plan contains no delineation between services which are competitive and which are non-competitive. SCPCA points to cross-examination of BellSouth witnesses which

indicated that selection of service category was unrelated to whether a service is competitive. SCPCA points to no specific witness testimony in this regard. Clearly, the Plan contains appendices divided between Basic Services, Interconnection Services, and Non-Basic Services, the latter of which provides options for consumers, and consumers have choice and discretion in choosing these services. Therefore, this contention of SCPCA is without merit. As discussed previously, the statute does not require a full determination of all services at this time.

SCPCA next argues that the approved Plan does not include effective safeguards to assure that rates for noncompetitive services do not subsidize the prices charged for competitive services as required in (B)(6) of the statute. We disagree with the assertion of the SCPCA. Full discussion is listed above regarding the safeguards included in the Plan which will protect against improper cross-subsidization, and we emphasize that this Commission has review authority over the workings of the Plan.

SCPCA further notes alleges that Order No. 96-19 erred in finding that BellSouth would be subject to state and federal antitrust law in its provision of service under the Plan. SCPCA then goes on to discuss a federal lawsuit between Peoples Telephone Company and BellSouth in Florida. SCPCA then cites the Court's ruling in Florida that BellSouth was immune in Florida from antitrust liability under the State action doctrine. Just because a Florida court comes to a particular legal conclusion, there is no assurance that a South Carolina court would make the same finding.

Further, BellSouth is free to assert any State action defense that it wants to in South Carolina, but it will have no assurance that the result will be the same. Therefore, until the courts tell us otherwise, we reiterate our holding that BellSouth is subject to state and federal antitrust law in its provision of service under the Plan.

SCPCA states its belief that Order No. 96-19 erred in finding that rates for non-competitive services are "just, reasonable, or not unduly discriminatory and provide a contribution to Basic Local Telephone Service." We have addressed this issue fully in the above discussion.

Finally, SCPCA alleges that we erred in Order No. 96-19 in finding that "market pressures will also work to maintain these rates (for non-competitive services) at just and reasonable levels." We find this allegation to be without merit, and therefore, reject it as well, referring to our previous discussions regarding future growth in the market.

We last address the Petition for Rehearing and Reconsideration of the Consumer Advocate. First, the Consumer Advocate states its belief that "institutionalizing rate increases for local telephone service when there are no competitive alternatives, and when the costs of providing that service are clearly continuing to decline, is clearly not in the public interest." The Consumer Advocate therefore alleges that the Plan as adopted by the Commission failed to meet the criteria set out in S.C. Code Ann.§58-9-575(B)(1). Again, we emphasize that the Plan as adopted by the Commission

merely caps rates. There is nothing in the Plan that prohibits BellSouth from reducing a rate pursuant to a lowering of costs. Under the Plan, the consumer will be able to fully benefit from cost reductions. Therefore, we reiterate our holding that the Plan is in the public interest.

The Consumer Advocate states that the Plan did not meet the criteria of §58-9-575(B)(2). We found in Order No. 96-19 that the Plan does not jeopardize the availability of reasonably affordable and reliable telecommunications services and is in compliance with this section. Again, we found that the existing rates are just and reasonable. Further, we have minimized the impact of increases in the future on consumers by capping basic rates for five years, and then allowing the Company an increase after that period pursuant to a certain prescribed formula. Therefore, we believe that the criteria set out the §58-9-575(B)(2) have been met, and reject the Consumer Advocate's arguments.

The Consumer Advocate attacks the Commission's holding that the Plan provides clearly identifiable benefits to consumers that are not otherwise available under existing regulatory procedures in compliance with S.C. Code Ann.§58-9-575(B)(3). Again, we reiterate that capping of rates cannot be imposed on BellSouth or otherwise guaranteed under traditional regulation. We still believe that this is clearly a benefit not obtainable under traditional regulation, and that the criteria of §58-9-575(B)(3) are therefore met. The Consumer Advocate's contention must be rejected.

The Consumer Advocate argues that consumers are not adequately

safeguarded under the Plan as required by 58-9-575(B)(5). We disagree. Current prices, which have been set and approved by this Commission, will not increase for five years, may decrease during that period, and therefore we feel consumers will be protected. After that transitional time period, Basic service will remain affordable and will not increase since BellSouth may not increase Basic service rates unless the Commission approves the increase. Any increase will not be greater than the rate of inflation minus the 2.1% productivity factor. We feel that this factor of 2.1% is sufficient and was included in the rules of the pricing plan in order to adjust for market changes and technological advances. This Commission is assured that competition will increase for BellSouth in all areas of service, including Basic services. In light of the many dynamic changes occurring in the telecommunications industry, we feel that this competition will place downward pressure on rates and will cause BellSouth to meet the demands of the marketplace.

As also stated previously, tariff filings must be approved by this Commission. If we do not feel a filing is beneficial, we will reject it, and we therefore reject the Consumer Advocate's argument that our jurisdiction over the filings is of "no value."

The Consumer Advocate next alleges that the Plan does not delineate what is competitive and non-competitive. This has been addressed above. We have also discussed the safeguards of the Plan. Clearly, the appendices to the Plan differentiate between Basic Services, Interconnection Services, and Non-Basic Services.

Non-Basic Services provides consumers with discretional choices which may encourage competition. Therefore, this contention of the Consumer Advocate is rejected.

We have discussed above our ruling on current rates being "just and reasonable" and therefore find that this argument is without merit. We will monitor the Plan and its rates in an ongoing basis.

The Consumer Advocate opines that Section (1) of the Plan improperly states that BellSouth can be regulated by the Plan in lieu of certain South Carolina Code sections, and that somehow adoption of this Plan by the Commission constitutes a blanket repeal of certain Code sections. Obviously, the Commission has no power to repeal any provision of the South Carolina Code; only the General Assembly maintains that right. Therefore, the Commission never intended to repeal said Code sections by implication or otherwise. If the Commission sees that specific Code sections are appropriate in whatever situation, the Commission must abide by these. Therefore, this allegation of the Consumer Advocate must be rejected.

The Consumer Advocate states that the Commission fails to make a finding regarding the carry-over of inflation factor increase percentage points to succeeding years after the cap ends. The Consumer Advocate alleges that if inflation points are permitted to be carried over, then productivity factor points must also be carried over. Order No. 96-19 did not address whether inflation points would be carried over. Therefore, the Commission need not

address whether productivity factor points must also be carried over. The contention of the Consumer Advocate is without merit.

Finally, the Consumer Advocate takes issue with the adoption of the productivity factor offset of 2.1% and states that the only recommended productivity factor was 5.3% advocated by Consumer Advocate witness Buckalew. Tr., Vol. 8, Buckalew at 163. Again, we would note that Volume 10, page 175 of the transcript of record containing the cross-examination of BellSouth witness Varner included an FCC conclusion that BellSouth was experiencing a productivity factor of its services overall of 2.1%. We again find this evidence to be credible, and affirm our 2.1% productivity offset shown in Order No. 96-19.

After due consideration of all the Petitions for Rehearing and/or Reconsideration of the Commission's Orders, we hold that they must be denied, because of the above-stated reasoning.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Rudolph Mitchell
Chairman

ATTEST:

Charles W Ballentine
Executive Director

(SEAL)